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TAGS: ECON ETRD KCOR YM ECON COM
SUBJECT: YEMEN'S TENDERING SYSTEM - A TEST OF PATIENCE

11. Summary: Yemen's non-transparent government procurement process tops the list of frustrations for Western companies interested in investing in Yemen. The poorest and least developed country in the Middle East, government projects offer one of the better ways for foreign companies to invest in Yemen. A drawn-out tendering process that is often overturned for "political reasons" discourages foreign companies. On the positive side, unlike its Gulf neighbors, Yemen has no laws explicitly favoring Yemeni companies. Foreign companies are permitted to bid alongside their domestic competitors. In practice, however, domestic companies usually manage to win the contracts often acting as the major partner to an international company. End Summary.

Political Pressure Takes Precedence Over Laws

12. As part of an IMF-directed economic reform initiative, the ROYG issued Law Number 7 of 1997 by presidential decree to organize government procurement. In addition to establishing a government tendering process and procurement system, the law created the High Tendering Board, chaired by the Deputy Prime Minister and Minister of Finance, and is composed of the Ministers of Planning and International Cooperation, Public Works and the appropriate line Minister. The law gives authority to the Ministry of Finance to supervise the tendering process and the Ministry of Public Works to oversee technical aspects of the tender. (Note: MOD Procurements are governed by another process. End Note). The High Tendering Board considers tenders between 150 million Yemen Riyals (YR) and 450 million YR (850,000 to 2.5 million USD). The entire cabinet votes on government tenders above 2.5 million USD. Ministry level committees handle all tenders below YR 150 million Riyals (850,000 USD).

13. In certain cases, the ROYG may issue a "limited tender" reducing the competition to three or more contracts for the following reasons: the need to maintain privacy, the risk of endangering public safety, urgent need, when there are only a few contractors who are able compete for the bid, and if the tender has been advertised twice without eliciting winning bid.

14. Despite the law, in practice the President can intervene on any tender and award the contract to a party of his choosing. The President and other high-placed officials have interfered several times to give tenders to parties of their choosing, rather than to the parties the High Tendering Committee awarded the contract.

Foreign Applicants Restricted In Practice

15. While the law treats foreign applicants equally, in practice Yemeni firms are treated favorably. According to the tender law, the ROYG can conduct a "pre and post- qualification process" to verify that foreign bidders meet the terms of the contract. Foreign companies must appoint an agent or an authorized representative to be present when the bid is submitted. Investment Law Number 22 of 2002 gives preference to local agricultural and industrial products and allows the ROYG to issue a winning contract to those tenders that are as much as fifteen percent above the lowest bid if local materials and or contractors are used.

16. This past summer revisions to the commercial law were announced that favor Yemenis. Details about the law remain unclear, but as proposed, the law states that Yemenis must own a 51 percent interest in all companies. When asked to explain the new law, several ROYG contacts admit that they are equally confused and are seeking clarification. If enacted this law could have a negative effect on future business.

Tendering Process

17. Tenders are advertised through international and local media. The ROYG employs local advertising only when the Ministry or High

Tendering Committee determines that local contractors using locally procured products can carry out the project. Foreign contractors may still bid on these projects, but they are not advertised internationally. All government tenders are advertised in the government paper "al-Thawra." Tenders are not presently advertised on government websites, although the ROYG is developing its e-business capabilities and could do so in the future.

18. The tendering law outlines standardized timelines, but in practice they do not exist. The law stipulates that tenders are to be opened publicly a minimum of one month after the tender is announced. Bids are to be submitted with bank guarantees of 2.5 percent of its price. Article Six of the tendering law states that "all respective authorities ensure equally fair treatment for all tender competitors, and any applicant, contractor or importer, can challenge the chief of that authority or any higher official or resort to judiciary when prone to any harm or damage as per stated in this law and the regulating by-laws." Due to weaknesses in the judiciary, however, this is not a viable recourse.

Yemeni Firms Favored

19. While the tendering law is generally fair as written, in reality American and Western firms face substantial discrimination. Post has heard allegations that American firms' secret bids were given to local companies who were then able to

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submit lower bids. In one case an American company won a tender but no date was ever announced for its award. In Yemen, once a tender is awarded it is by no means final. Intervention, cancellation, and recall are common.

Comment

110. Comment: Post has engaged the ROYG at the highest levels concerning non-transparent and unfair bidding practices. While Yemeni officials continually seek to bring in more Western investment, they have yet to heed Post's advice that attracting foreign investors requires that the ROYG first live up to international standards on transparency and accountability. Until the ROYG reforms its tendering system to allow foreign firms to compete, Government procurement will remain only a potential market for American firms. End comment.